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Background Document

For Proposed Amendments To

301 CMR 40.00
Toxic Use Fee

Regulatory Authority:
M.G.L. Chapter 21I, §§ 4 and 19

September 2014

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I. INTRODUCTION

The Executive Office of Energy and Environmental Affairs (EEA), as chair of the Administrative Council on Toxic Use Reduction (TUR), is proposing to amend the Toxic Use Fee regulations (301 CMR 40.00), to implement decisions made by the Administrative Council in calendar year 2014, pursuant to its duties under the Toxics Use Reduction Act (TURA, M.G.L. c. 21I, as amended in July 2006). Specifically, the Council is proposing a fee increase, as set forth in detail below.

II. BACKGROUND AND PURPOSE

Originally enacted in 1989, TURA requires certain facilities to report their use of toxic chemicals and examine ways to decrease their use, wastes and releases, with the goal of protecting public health, the environment, and workers, while helping businesses to become more efficient, sustainable and globally competitive.

The TURA program, funded by fees paid by large quantity toxics users, ensures compliance and provides a variety of services including training, onsite one-on-one assistance, grants, research, laboratory testing and other services. Since 2000, the TURA program has helped Massachusetts businesses to reduce toxics use by 23% and toxic byproducts by 42%¹, reducing chemical transportation risks, workplace hazards, and toxics in products. The approach of toxics use reduction helps companies to find efficient ways to reduce pollution, and has helped many Massachusetts businesses to remain competitive in a global marketplace increasingly aware of toxics issues.

Section 19D of TURA mandates that the fees be set to provide between \$4 and \$5.5 million in 1991 (1989 dollars), and that the fees be adjusted annually to reflect changes in the Producer Price Index. This adjustment has never been made during the life of the program. If it had, the fees would be 69% larger than they are now.

TURA was amended on July 28, 2006, by “An Act Amending the Toxics Use Reduction Act” (Chapter 188 of the Acts of 2006). The 2006 TURA amendments provided the Council with authority in Section 19D to propose changes to the fee structure, while maintaining the structure of a base fee, a per-chemical fee, and maximum fees. The Council is to consider a “number of factors, including, but not limited to: potential revenues generated by the fees, the impact fees will have on toxics users and their use of toxic substance, and the funding required for the program to meet its statutory obligations.” This regulatory package implements the actions taken by the Administrative Council during calendar year 2014 to change the TURA Use Fee so that sufficient revenue is raised to meet statutory obligations, while considering other relevant factors.

The proposed fee increase would reach the original statutory minimum of \$4 million, in order to maintain minimum program functionality. The proposal includes adjustments to reduce the impact on small businesses.

¹ Measured using 2012 data normalized for changes in production reported by a core group of industries that have been subject to reporting since 2000.

As described below, EEA has taken stakeholder input into account into development of this proposal, and will actively seek further input in the public comment period. There will be four public hearings in geographically distributed portions of the state and extensive outreach on the proposed regulation.

III. DESCRIPTION OF THE PROPOSED REGULATIONS

A. Toxic Use Fee, 301 CMR 40.00

The toxics use fee structure, set in 1989, consists of a base fee set according to number of employees (company size), a per-chemical fee, and a maximum fee. In addition there are fees for late filing. The fee for on-time filing is the sum of the base fee and per chemical fee that does not exceed the maximum fee set for that company size.

The fees fund services designed to help TURA filers and other businesses reduce toxic use and waste, while also helping all the agencies in the Commonwealth to coordinate their regulatory strategies and focus on prevention. They also serve as a disincentive to the use of toxic chemicals.

The components of the proposed fee adjustment are as follows.

Option B

Per chemical fee: A 50% increase in the per chemical fee from \$1,100 to \$1,650;

Base fee: A 50% adjustment to increase the base fee for businesses with 100 or more employees,

Base fee – small businesses: No change in the base fee for businesses with fewer than 100 employees, and

Fee maximum: An approximate 50% increase in the maximum fee for businesses with fewer than 100 employees, and an approximate 22% increase in the maximum fee for businesses with 100 to 499 employees. No change for businesses with 500 or more employees.

In addition to these one-time adjustments, going forward, EEA will implement annual changes in the base fee, per chemical fee, and fee maximum to reflect annual changes in the Producer Price Index, as required by Section 19D.

Proposed one-time fee adjustment*						
<u>Number of employees</u>	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥ 10 to < 50	\$1,850	\$1,850	\$1,100	\$1,650	\$5,550	\$8,325
≥ 50 to < 100	\$2,775	\$2,775	\$1,100	\$1,650	\$7,400	\$11,025
≥ 100 to < 500	\$4,625	\$6,938	\$1,100	\$1,650	\$14,800	\$18,000
≥ 500	\$9,250	\$13,875	\$1,100	\$1,650	\$31,450	\$31,450
*Subsequent to this one-time fee adjustment, EEA will implement annual changes in the base fee, per chemical fee, and fee maximum to reflect annual changes in the Producer Price Index, as required by Section 19D.						

In addition to the proposed fee adjustment, the Council invites public comments on alternative possible fee adjustments. These alternative options are listed in the attached Technical Support Document. All of the options include implementing, going forward, annual changes in the base fee, per chemical fee, and fee maximum to reflect annual changes in the Producer Price Index, as required by Section 19D.

B. Development of the Proposed Regulation

To develop this proposed fee adjustment, the TURA program has engaged with stakeholders in a variety of ways.

The TURA program first considered the options for a fee adjustment in 2007 and 2008. At that time, the TURA Advisory Committee considered a number of detailed fee adjustment proposals, and formed a subcommittee including business representatives and others to work intensively with TURA program staff on impact analysis for several fee adjustment scenarios. Key considerations at that time included taking account of very large quantity use, degree of hazard presented, and the importance of providing mitigations for small businesses.

The meetings of the Administrative Council and of the Advisory Committee are open to the public. In addition to the required public notification, approximately 60 stakeholders that follow Program activities are sent an agenda prior to each meeting of the Council and of the Advisory Committee. The stakeholders include TURA filers and state and national trade associations, including Associated Industries of Massachusetts (AIM), American Chemistry Council (ACC), Massachusetts Chemistry and Technology Alliance (MCTA), as well as advocacy, labor, public health, and members of the public. TURA fees and/or program funding were discussed at 11 meetings of the Advisory Committee between May 2008 and June 2011 (May 5, 2008, June 16, 2008, November 5, 2008, September 17, 2009, October 26, 2009, January 12, 2010, March 9, 2010, September 9, 2010, March 29, 2011, May 19, 2011, June 21, 2011). Members of the public are invited to participate and provide comment at the meetings.

In 2014, TURA program staff developed a new proposal, taking into account the input provided by stakeholders in prior years. This proposal was discussed at two meetings of the Advisory Committee and three meetings of the TURA Administrative Council. The Council invited stakeholders to provide input in writing, or in person at its September 19, 2014 meeting, to help inform its deliberations. At this meeting, and in written comments, the Council received a number of arguments both for and against the fee adjustment. Based on the comments received, the Council developed three methods for setting fees. These methods were referred to as “Option A”, “Option B” and “Option C.” (See attached Technical Support Document for a description of Option A and Option C and the Council’s rationale for not choosing the options. The Council invites public comment on the alternative options)

The comments that were received prior to and during the September meetings reflected similar points to those that had been discussed in the 2007-2011 fee discussions, which program staff took into account in designing the present proposal. The fee increase should be least for small businesses that use one or two chemicals. Even though the largest TURA filers have more ability to pay, they should not bear an inordinate burden. And while the impact on TURA filers who cannot easily find substitutes or reduce use should not be severe, the Act does contemplate an impact on these companies because of the risks and costs toxics use imposes on

communities. Program resources, including research to develop new alternatives, or help with customer requirements, have helped with many cases where change was not immediately feasible, but if they are to help, sufficient revenue is necessary for the program to function. There was a consensus among the commenters that of the three options presented to the Council, they preferred the one designated as “Option B,” which is the option described in detail here, because it has the best success at achieving the Council’s goals while also using a straight forward rationale for effecting the increase. Two commenters who had participated in the 2007-2008 fee subcommittee noted that this proposed fee adjustment is consistent with the principles for fee restructuring identified at that time.

IV. ECONOMIC IMPACTS

The impact of this change in fees will vary according to the size of the company (number of employees) and the number of chemicals that it reports. The breakdown set forth below is an estimate based on TUR reports submitted by July 1, 2014. If companies reduce their use of toxics below the reporting threshold they no longer have to report and pay the fee, and companies increasing above the threshold would become subject to reporting and the fee. The number of chemical reports does vary slightly year to year.

Facilities that have from 10-49 employees. There are 188 small businesses currently reporting under TURA in this category, making up 41% of the total facilities subject to TURA. Of these, 77 facilities will have a \$550 increase in their fees; 45 facilities will have an increase of \$1100; and 51 facilities will be able to take advantage of the fee maximum, capping their fee at 4 chemicals even though they may use as many as 13 chemicals.

# Chemicals	10-49 FTE				
	# Reporters	Current Fee	Proposed Fee	\$ Increase	% Increase
1	74	\$ 2,950	\$ 3,500	\$ 550	19%
2	45	\$ 4,050	\$ 5,150	\$ 1,100	27%
3	13	\$ 5,150	\$ 6,800	\$ 1,650	32%
4	18	\$ 5,550	\$ 8,325	\$ 2,775	50%
5	11	\$ 5,550	\$ 8,325	\$ 2,775	50%
6	7	\$ 5,550	\$ 8,325	\$ 2,775	50%
7	7	\$ 5,550	\$ 8,325	\$ 2,775	50%
8	4	\$ 5,550	\$ 8,325	\$ 2,775	50%
9	3	\$ 5,550	\$ 8,325	\$ 2,775	50%
10	2	\$ 5,550	\$ 8,325	\$ 2,775	50%
11	1	\$ 5,550	\$ 8,325	\$ 2,775	50%
12	1	\$ 5,550	\$ 8,325	\$ 2,775	50%
13	2	\$ 5,550	\$ 8,325	\$ 2,775	50%

Facilities that have from 50-99 employees: There are 97 facilities in this category. The dollar amount of the fee increase would range from \$550 to \$3,625, and the percent increase would range from 14% to 49%.

# Chemicals	50- 99 FTE				
	# Reporters	Current Fee	Proposed Fee	\$ Increase	% Increase
1	36	\$ 3,875	\$ 4,425	\$ 550	14%
2	15	\$ 4,975	\$ 6,075	\$ 1,100	22%
3	17	\$ 6,075	\$ 7,725	\$ 1,650	27%
4	9	\$ 7,175	\$ 9,375	\$ 2,200	31%
5	8	\$ 7,400	\$ 11,025	\$ 3,625	49%
6	2				
7	3				
8	4				
10	2				
12	1				

Facilities that have from 100-499 employees: There are 145 facilities in this category. The dollar amount of the fee increase would range from \$2,863 to \$5,675, and the percent increase would range from 22% to 50%.

# Chemicals	100-499 FTE				
	# Reporters	Current Fee	Proposed Fee	\$ Increase	% Increase
1	46	\$ 5,725	\$ 8,588	\$ 2,863	50%
2	36	\$ 6,825	\$ 10,238	\$ 3,413	50%
3	16	\$ 7,925	\$ 11,888	\$ 3,963	50%
4	15	\$ 9,025	\$ 13,538	\$ 4,513	50%
5	11	\$ 10,125	\$ 15,188	\$ 5,063	50%
6	8	\$ 11,225	\$ 16,838	\$ 5,613	50%
7	2	\$ 12,325	\$ 18,000	\$ 5,675	46%
8	3	\$ 13,425	\$ 18,000	\$ 4,575	34%
9	1	\$ 14,525	\$ 18,000	\$ 3,475	24%
10	2	\$ 14,800	\$ 18,000	\$ 3,200	22%
11	1				
12	1				
13	2				
14	1				

Facilities that have 500 or more employees: There are 29 facilities in this category. All of them would have a 50% increase in their fees. None would reach the fee maximum. The dollar value of the increase would range from \$5,175 to \$10,125 depending on the number of chemicals used.

# Chemicals	500 + FTE				
	# Reporters	Current Fee	Proposed Fee	\$ Increase	% Increase
1	11	\$ 10,350	\$ 15,525	\$ 5,175	50%
2	1	\$ 11,450	\$ 17,175	\$ 5,725	50%
3	4	\$ 12,550	\$ 18,825	\$ 6,275	50%

4	2	\$ 13,650	\$ 20,475	\$ 6,825	50%
5	3	\$ 14,750	\$ 22,125	\$ 7,375	50%
6	4	\$ 15,850	\$ 23,775	\$ 7,925	50%
7	1	\$ 16,950	\$ 25,425	\$ 8,475	50%
9	1	\$ 19,150	\$ 28,725	\$ 9,575	50%
10	2	\$ 20,250	\$ 30,375	\$ 10,125	50%

In each year after the change, the fee amount will be adjusted to reflect changes in the Producer Price Index. It is expected that this change will not have significant impact as the purpose of this change is to track changes in the economy that would likely affect ability to pay in a comparable way.

Economic benefits of toxics use reduction

Some companies facing an increase in fees for chemical use will be motivated to examine alternatives. If they can find them, they will likely experience many benefits in addition to the elimination of fees. Switching to safer materials typically brings benefits in waste cost reductions, improved worker productivity and health, customer appreciation, reduced compliance management costs, and reduced liabilities. Sometimes safer substitutes offer other advantages as well, such as quicker production time or higher quality product. Because TURA does not require that companies change chemical use, companies only implement those toxics use reduction options that will produce net benefits for them.

Some companies will have difficulty switching chemicals, or reducing the use of reportable chemicals below threshold amounts. In such cases, the program offers help in researching and developing alternatives, working with customers, and finding substitute products to sell. Some companies accepting this help have found that seemingly intractable problems can be addressed. For example, shopping carts were once all made with chrome plating, and manufacturers felt customers would not accept an alternative, but shopping carts that are not chrome plated are now commonplace. The TURA program has helped many companies to find alternatives that can help make new products or help form new product lines.

V. SMALL BUSINESS IMPACT STATEMENT

The proposed fee adjustment is designed to mitigate impacts on smaller businesses. Option A in the attached Technical Support Document is an across the board increase of 50% for all categories. Option B was selected because it reduces the increase for smaller companies. Seventy-percent of the businesses in the 10-49 employee range will see increases of no more than 32%, as compared to 100% of the business realizing a 50% increase with Option A. Nearly 40% of this category will see an increase of \$550, a 19% increase in their current fee.

The business with 50-99 employees, nearly 80% will see an increase of less than 32% , and 37% will see an increase of only \$550. These impacts are substantially less than would have resulted from an across-the-board increase that did not exercise special consideration for smaller businesses.

In addition, the program services made possible by the fee increase will benefit small businesses. The impact on small businesses of a fee increase is offset by the fact that the fee increase will

allow for the provision of services to them. Small businesses are far more in need of the assistance services of TURA than other companies. OTA's services have been used by hundreds of small companies that do not have the time to research and understand regulatory requirements or technical options. TURI's services, including their laboratory that performs trials of safer substitutes, are valuable for small companies that do not have resources to perform research. TURI's grants help companies to buy new equipment necessary for cleaner alternatives. The impact of the lack of these services is most critical for small businesses. Motivating small businesses to consider reducing such use, and helping them to understand their options, has significant benefits that cannot be quantified in advance. However, the history of the program supports the expectation that many companies will be motivated to engage in the effort to become safer, and many will use the resources of the program to support their efforts.

There are also expected economic impacts if the fee increase is not carried out. Toxics use reduction reduces the probability and number of spills, accidents, and generation of new hazardous waste sites requiring cleanup, as well as reducing rates of occupational illness. In the absence of adequate program services, costs from these and other impacts of toxic chemical use can be expected to rise – including costs of state-sponsored cleanups, lost work days and other costs of toxic exposures in the work place and in communities. In addition, voluntary TURA program services provide direct economic benefits to those companies that choose to make use of them. These services help small businesses to comply with environmental regulations, purchase equipment, build new business models, and expand markets; help large businesses to gain and maintain competitive advantage in international work; and help businesses to develop and test new, safer products. Without adequate program funding, these benefits will be reduced.

VI. AGRICULTURAL IMPACTS

Pursuant to MGL c. 30A, Section 18, state agencies must evaluate the impact of proposed programs on agricultural resources within the Commonwealth. The proposed revisions are intended to further reduce the use and release of toxic substances into the environment. The proposed regulations are not expected to have any negative impacts on agricultural production in Massachusetts.

VII. IMPACTS ON MUNICIPALITIES

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth's municipalities. Municipalities are statutorily exempt from TURA and therefore the proposed amendments will have no direct effect on them. However, municipalities are likely to benefit from reduced pollution and associated risks to the extent the proposed amendments reduce the use of toxic substances in their jurisdictions. This action can reduce the costs, severity and frequency of emergencies requiring response from municipal authorities, the incidence of exposures requiring medical treatment, and the likelihood of land or water contamination requiring treatment. Municipalities also benefit from the Environmentally Preferable Purchasing contracts of the Commonwealth's Operational Services Division, which was created and is maintained with the assistance of the TURA program, and from TURI's community grants program, which provides funding for toxics use reduction efforts by municipal departments as well as local and regional community organizations. Municipalities have also benefited from the program's assistance to water treatment facilities, and to fire departments,

with whom the program works to promote prevention of the use of chemicals that cause or exacerbate serious hazards in fires and spills.

VIII. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA)

Pursuant to 301 CMR 11.03(12) (MEPA Regulations), these proposed regulations will not reduce standards for environmental protection, opportunities for public participation in permitting or other review processes, or public access to information generated or provided in accordance with these regulations. Promulgation of these regulations, therefore, does not require the filing of an Environmental Notification Form under MEPA.

IX. IMPACTS ON OTHER PROGRAMS

Failure to raise sufficient revenues to adequately conduct the TURA program will impact the Massachusetts Fire Marshal's efforts to instill prevention in emergency response; the work of the Department of Occupational Safety in reducing workplace exposures; the efforts of the Department of Public Health to reduce the incidence of asthma, and the ability of the Board of Buildings Regulation and Standards to continue to develop building codes to address hazardous constituents in buildings. These are recent examples of work begun with the TURA program that may not be continued due to lack of resources. In general, the TURA program works cooperatively with other agencies to incorporate the preventive strategy in relevant efforts. Many agencies on the local, federal and state level have worked with the TURA program to learn about and implement toxics use reduction. This work has greatly declined in recent years.

XI. PUBLIC PARTICIPATION

M.G.L. Chapter 30A requires the Executive Office of Energy and Environmental Affairs to give public notice and provide an opportunity to review the proposed regulations at least 21 days prior to holding a public hearing. Four public hearings will be held, geographically distributed across the state, in order to ensure that every interested party has an opportunity to comment. The hearings will be announced to all TURA filers and planners, as well as to interested parties, and will be held in accordance with the procedures of M.G.L. Chapter 30A. The public hearing notice, proposed regulations and background document will be available on EOEEA's website: <http://tinyurl.com/tur-regulations> or www.mass.gov/eea/waste-mgmt-recycling/toxics/toxic-use-reduction/tura-program-regulations.html

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